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Memorandum 85-107

Subject: Handbook of Commission Practices and Procedures

The Commission has adopted the practice of recording in a "Handbook" its decisions concerning its practices and procedures. From time to time, the staff presents to the Commission for review and possible modification a draft of the Handbook that has been revised to reflect the decisions made by the Commission since the last draft of the Handbook was adopted. Attached is a draft of the revised Handbook. It is presented for Commission review and approval (with or without modifications).

The Legislative Counsel was not a voting member of the Commission at the time the Commission last considered the number of Commissioners that constitute a quorum. Since then, legislation has been enacted that makes the Legislative Counsel a voting member of the Commission. As a result, the Commission now has ten voting members, seven members appointed by the Governor, two legislative members, and the Legislative Counsel. According to statute, a quorum consists of a majority of ten, or six members. See Exhibit 1 attached.

In the past, because of the difficulty of obtaining a quorum, the Commission has ignored the statute and has not included the legislative members in computing the number required for a quorum. Legislative members were counted when they regularly attended Commission meetings. But the quorum requirement was revised (so that it was computed ignoring the legislative members) when the legislative members stopped regularly attending Commission meetings when the State Constitution was amended to eliminate the former rule that every other year was only a budget session. At the time that decision was made, the Commission was not aware of the statutory provisions that apply to determine what constitutes a quorum. If the Commission decides to ignore the legislative members in determining what constitutes a quorum, a quorum would consist of a majority of eight, or five members.

The staff is unaware of any provision that would preclude the Commission from functioning as a subcommittee in the absence of a

quorum. But no action of the Commission could be taken by a subcommittee. In the absence of a quorum, the report of the subcommittee would need to be adopted by a majority of a quorum, a quorum being present, before it would constitute an action of the Commission. In the past, the Commission has functioned as a subcommittee in cases where a quorum could not be obtained so that the work of the Commission could proceed pending appointments by the Governor to fill vacancies on the Commission. Also, we have paid the Commissioners who attended the "subcommittee" meeting at which a quorum was not present their travel expenses and per diem.

We have noted other matters for your attention in notes that are included in the draft of the Handbook.

By statute, we are required to provide each member of the Commission when appointed with a copy of the law relating to public meetings. A copy of this law is included in the Handbook. Each Commissioner must be familiar with this law so that there will be no inadvertent violation of the law. In addition, the Attorney General's office has recently distributed to each state agency a copy of its pamphlet relating to open meeting laws. We requested several additional copies of this pamphlet to provide to future commissioners at the time of their appointment and to provide to current members of the Commission for their information.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

## Exhibit 1

## QUORUM FOR STATE BOARD OR COMMISSION

In California, in the absence of contrary statutory provisions, public bodies are governed by Civil Code § 12 and Code of Civil Procedure § 15, both of which state:

Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them, unless it is otherwise expressed in the Act giving the authority.

In People v. Harrington, 63 Cal. 257, 260 (1883), the court held under the virtually identical predecessor to Civil Code § 12 and Code of Civil Procedure § 15 (Political Code § 15) that, "the action of a quorum is the action of the board and that a majority of the quorum present could do any act which a majority of the board if present might do." In Harrington the action in dispute was an action of the five-member Yuba County Board of Supervisors, where the action was approved by 2 members of a quorum of 3.

People v. Hecht, 105 Cal. 621, 627 (1895), held that under Political Code § 15, "For all practical purposes the majority becomes the full board." In Hecht only 13 of the 15-member Board of Freeholders had been duly elected. The court held that the purpose of Political Code § 15 had been to prevent the impotence of a body in just such a circumstance.

Ursino v. Superior Court, 39 Cal. App. 3d 611 (1974), iterated in dicta the principles of Hecht and Harrington, and Martin v. Ballinger, 25 Cal. App. 2d 435 (1938), applied the principles in a slightly more extreme context. Martin related to the vote of the remaining four members of the Concord City Council with respect to the replacement of

the fifth member, who had resigned. Where two of the remaining four members abstained from voting and two voted in favor of a replacement member, the court held that the two votes in favor constituted a majority of a quorum of 3, and that the abstainers must vote against the measure to defeat it, even though they had previously stated their objection to replacing the resigned member until the next regular election.

The California Attorney General has cited Harrington and Hecht as authority under Civil Code § 12 and Code of Civil Procedures § 15 in opinions relating to a city council sitting as a city redevelopment agency, 61 Op. Att'y Gen. 243,252 (1978); the Unemployment Insurance Appeals Board, 63 Op. Att'y Gen. 240, 254 (1980); and the Motion Picture Council, 63 Op. Att'y Gen. 428, 435 (1980).

Prepared by:

Judie Suelzle, Student Legal Assistant

July 17, 1985

0109z/0110z

CALIFORNIA LAW REVISION COMMISSION

H A N D B O O K

O F

P R A C T I C E S A N D P R O C E D U R E S

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January 1986

The purpose of this handbook is to state in a convenient form some of the policy decisions made by the California Law Revision Commission with respect to its practices and procedures. Except where a citation to a specific Commission decision or other authority is given, this handbook consists of statements of existing practice.

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CHAPTER ONE  
OFFICERS AND MEMBERS OF COMMISSION

OFFICERS

The officers of the Commission are the Chairperson<sup>1.1</sup> and the Vice Chairperson. The term of office of the Chairperson and Vice Chairperson is one year, commencing on ~~December 31~~ July 1 of each year.<sup>1.2</sup> No officer is eligible to succeed himself or herself in the same office in which the officer has served a full term.<sup>1.3</sup> However, an officer who has served for less than a full term may succeed himself or herself in the same office for a full term;<sup>1.4</sup> and, where the Chairperson is reelected to office, the incumbent Vice Chairperson is eligible for reelection even though reelection may result in the Vice Chairperson succeeding himself or herself for another full term.<sup>1.5</sup>

[NOTE: Does the Commission wish permanently to alter the beginning date of the term of office of elected officers to coincide with the Commission's fiscal year?]

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- 1.1. Cf. Gov't Code § 8283 (the commission shall select one of its members chairman).
- 1.2. Minutes, December 1981; Minutes, October 1985.
- 1.3. Minutes, January 1960.
- 1.4. Minutes, December 1960.
- 1.5. Minutes, January 1962.

## RECOGNITION OF SERVICE

The practice of the Commission is to present a plaque containing a gavel to each Chairperson shortly after the term as Chairperson ends. The cost of the plaque is financed by contributions from the other members of the Commission and the legal staff.<sup>1.6</sup>

A suitably framed certificate is awarded to members upon completion of their service on the Commission in substantially the following form:<sup>1.7</sup>

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### CALIFORNIA LAW REVISION COMMISSION

#### RECOGNITION OF DISTINGUISHED SERVICE AS MEMBER

Presented to

HOWARD R. WILLIAMS

In recognition of distinguished service as a member of the  
California Law Revision Commission  
1971-1979

Chairperson 1977-1979  
Vice Chairperson 1975-1977

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## MATERIALS AND SUPPLIES

**Binders for Commission materials.** Some members of the Commission use binders to keep Commission material in a convenient form. Upon request to the Commission's office, a member of the Commission will be provided with the binders necessary for this purpose.

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1.6. Minutes, October 1979.

1.7. Minutes, February 1978.

Credit cards. Members of the Commission are provided PSA credit cards and Department of General Services charge cards for use in connection with official business of the Commission.

#### EXPENSE CLAIMS

Travel claims for members appointed by the Governor should be submitted to the Commission's office. The member submits the necessary information on a simple form that may be obtained from the Commission's office; the formal travel expense claims will be completed by the Commission's Administrative Assistant and returned to the member to be signed.

## CHAPTER TWO MEETINGS AND PROCEDURE

### MEETINGS<sup>2.1</sup>

Regular meetings ordinarily are scheduled for at least every other month. A meeting is not held during the month of August. *Meetings ordinarily are held either in San Francisco or in Los Angeles. Meetings ordinarily are scheduled so that two meetings are held in San Francisco and then one meeting in Los Angeles.* Meetings are scheduled so that meetings are held in various cities throughout the state. Meetings in San Francisco should be held downtown rather than at the airport.<sup>2.2</sup>

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- 2.1. Minutes, October and November 1979; Minutes, November 1980; Minutes, November 1982; Minutes, January 1984. Revised to reflect practice of meeting on Thursday afternoon and evening and Friday.
  - 2.2. Minutes, January 1983.

A meeting scheduled for the equivalent of one day is scheduled as follows:

Friday//7:00/p.m.//10:00/p.m.

Saturday//9:00/a.m.//12:00/noon

A meeting scheduled for one and one-half days is scheduled as follows:

Friday//7:00/p.m.//10:00/p.m.

Saturday//9:00/a.m.//4:00/p.m.

Meeting times are normally scheduled as follows:<sup>2.3</sup>

Thursday - 3:00 p.m. - 10:00 p.m.

Friday - 8:30 a.m. - 6:00 p.m.

Saturday (if necessary) - 9:00 a.m. - 12:00 noon.

[NOTE: Does the Commission wish to change the time when the meeting ends on Friday to an earlier time?]

The Chairperson is authorized to call a special meeting and to change the date, times, and place of a previously scheduled meeting when necessary in order to improve attendance at the meeting or for good reason. Notice of the special meeting or rescheduled meeting shall be given to all members of the Commission.

#### MEETING AGENDA<sup>2.4</sup>

Subjects that are of interest to persons who attend meetings as observers should be scheduled for consideration early in the meeting so that the meeting can be adjourned early if the agenda is

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2.3. Minutes, January 1985.

2.4. Minutes, January 1969. See also Minutes, June 1968.

completed. The staff is to schedule no more work for any particular meeting than can reasonably be considered at the meeting. Staff-prepared meeting materials should be sent out so that Commission members will receive the materials no less than five days prior to the meeting.<sup>2.5</sup> Commissioners are presumed to have read all the material to be considered at the meeting and the staff is to make its presentations on this assumption.

#### CONDUCT OF MEETING

**Quorum.** Four members of the Commission constitute a quorum and must be present before the Commission may attend to any business.<sup>2.6</sup> Any action may be taken by a majority of those present if a quorum is present, but any final recommendation to the Legislature must be approved by a minimum of four affirmative votes.<sup>2.7</sup> The Chairperson is authorized to determine that fewer than four members constitutes a quorum for the purposes of a particular meeting and members attending the meeting are entitled to per diem and travel expenses but no final action shall be taken at such meeting.<sup>2.8</sup>

[NOTE: The decision as to the number of Commissioners that constitute a quorum was made before the Legislative Counsel was made a voting member. See also Memorandum 85-107 and Exhibit 1 to that Memorandum.]

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2.5. Minutes, September 1984.

2.6. Minutes, April 1963.

2.7. Minutes, March 1959; Minutes, April 1963; Minutes, February 1966.

2.8. Minutes, January 1958; Minutes, April 1963.

Meeting starting time. Commission meetings are not commenced with the Commission acting as a subcommittee if absent members are known to be in the city where the meeting is being held and are known to be planning to attend the meeting.<sup>2.9</sup> However, meetings should not be delayed more than 30 minutes from the originally scheduled starting time to await the arrival of absent members who are known to be planning to attend the meeting.<sup>2.10</sup>

Actions upon adopted motion. Actions to send out tentative recommendations for review and comment or to submit recommendations to the Legislature and other Commission actions are made on a motion adopted by the Commission.<sup>2.11</sup>

Roll call votes. A roll call vote shall be taken on any matter at the request of any member of the Commission.<sup>2.12</sup> Votes are not recorded in the Minutes unless a member requests that the vote on a particular matter be so recorded; on rare occasions, a member will request that the Minutes reflect that the member voted against the action taken by the Commission.

Committees. The Commission has disapproved the use of standing subcommittees to initially review studies on the Commission's agenda and to submit their recommendations to the Commission.<sup>2.13</sup>

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2.9. Minutes, April 1984.

2.10. Minutes, August 1985.

2.11. Minutes, January 1985.

2.12. Minutes, November 1965.

2.13. Minutes, January 1960; Minutes May 1960.

**Research consultants.** Research consultants are requested to attend meetings from time to time.

**Open meetings.** Meetings of the Commission are open to the public and are subject to the provisions of the Bagley-Keene Open Meeting Act.<sup>2.14</sup> Any person may attend as an observer and may address the Commission or participate in the discussion as authorized by the Chairperson.<sup>2.15</sup> The agenda for each meeting is sent to a selected group of persons who normally attend the meetings as observers and to anyone else who requests a copy of the agenda or who may be interested in the subject matters of a particular meeting.

**Termination of deliberations.** The Chairperson should terminate prolonged deliberations on any matter by either bringing it to a vote when appropriate or referring the matter to the staff either for further research or redrafting.<sup>2.16</sup>

#### REPORTS AND RECOMMENDATIONS

**Listing of members approving report.** The printed reports of the Commission are dated as of the month in which the Commission approves their printing and the names of the members of the Commission at the time of such approval are listed in the letter of transmittal.<sup>2.17</sup>

**Dissents.** Dissenting votes of Commission members on all or part of a recommendation of the Commission are not reported in the

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2.14. Gov't Code §§ 11120-11131.

2.15. Minutes, February 1960; statement of existing practice.

2.16. Minutes, March 1959.

2.17. Minutes, October 1960.



recommendation. Rather, a statement is included in the Annual Report of the Commission stating in substance that "occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission."<sup>2.18</sup>

Editorial, technical, and conforming revisions.<sup>2.19</sup> After the Commission has approved a recommendation for printing, the staff may make substantive or technical revisions in preparing the recommendation for printing where necessary to conform to the Commission's policy decisions or to correct technical defects. Members of the Commission may submit suggested editorial revisions to the staff for consideration in preparing material for publication.

### CHAPTER THREE RELATIONSHIP WITH LEGISLATURE

#### INTRODUCTION OF BILLS

Commission bills are ordinarily introduced by one of the legislative members of the Commission.<sup>3.1</sup> The Commission is willing to allowing other members of the Legislature to be coauthors of its bills.<sup>3.2</sup> In such a case, the other legislators are selected by the Executive Secretary after consulting with the legislative members of the Commission. Ordinarily, Commission bills will be introduced in

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2.18. Minutes, August 1960. See also Minutes, July 1960.

2.19. Minutes, October 1979.

3.1. Minutes, January 1959.

3.2. Minutes, January 1959.

the form in which they are published by the Commission and later amended to reflect changes which the Commission believes desirable.<sup>3.3</sup>

#### CONTACTING INDIVIDUAL MEMBERS OF LEGISLATURE<sup>3.4</sup>

The Commission has considered whether and under what procedure the Executive Secretary should contact individual members of the Legislature to explain Commission bills. A member of the Legislature should not be contacted unless the member has raised questions about the Commission's bills in committee or otherwise and it seems likely that the member does not fully understand the Commission's recommendation or the reasons for it. If it appears desirable, the Executive Secretary should contact the member to answer such questions as the member may have about the bill and otherwise explain it.

#### ACCEPTANCE OF AMENDMENTS AFTER INTRODUCTION IN LEGISLATURE

Whenever possible after Commission recommended legislation has been introduced in the Legislature, the Commission (or, if time does not permit, the Chairperson) should be given an opportunity to review amendments to be made to the bills except for amendments made by a legislative member on the member's own initiative.<sup>3.5</sup>

The legislative member of the Commission carrying the bill ~~and the Executive Secretary~~ is authorized to amend a Commission bill prior to its hearing to eliminate an objection to the bill, and to agree to an amendment proposed in the course of a legislative

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3.3. Minutes, January 1959.

3.4. Minutes, January 1971.

3.5. Minutes, February 1965.

committee hearing on a Commission bill, so long as the amendment does not depart from the basic policy of the Commission with respect to the particular bill.

The Commission has considered the policy the staff should follow with respect to asking the legislator carrying a Commission bill to amend the bill. What procedure should be followed, for example, (1) when there is an objection to a Commission recommended bill that can be removed by making a clarifying or substantive amendment to the bill or (2) when a question is raised concerning the meaning of a provision of a Commission recommended bill and the intent of the Commission can be made clear by a clarifying amendment to the bill or (3) when a suggestion is made that a provision be added to the bill to make a technical or clarifying revision in the area of law dealt with in the bill.

No amendment should be made by a member of the Commission's staff in a Commission recommended bill without the amendment being first approved by the Chairperson of the Commission or, if it is not possible to contact the Chairperson, the Vice Chairperson of the Commission. The staff is not authorized to suggest to the legislative member carrying the bill that he or she agree to amendments proposed at legislative hearings and should seek a delay (before determining whether to suggest to the legislative member carrying the bill that he or she agree to the amendment) to permit time to contact the Chairperson to obtain approval of the amendment or, if unable to contract the Chairperson, to obtain the approval of the Vice Chairperson. The procedure outlined above applies whether or not the

staff believes that the amendment is substantive or nonsubstantive.  
If an amendment is made to a Commission recommended bill by the  
legislative committee itself at the legislative hearing on the bill,  
the amended bill shall be presented to the Commission for review and  
action at the next Commission meeting.<sup>3.6</sup>

[NOTE: Is this a correct statement of the policy the Commission wishes the staff to follow?]

#### REQUEST FOR AUTHORITY TO CONTINUE EXISTING STUDIES<sup>3.7</sup>

Each session a concurrent resolution is submitted to authorize continuance of existing studies and any new studies the Commission desires to undertake and to drop previously authorized studies from the Commission's agenda.

#### RECOMMENDATIONS FOR CHANGES IN LAWS ENACTED UPON COMMISSION RECOMMENDATION

The Commission has established that, as a matter of policy, unless there is a good reason for doing so, the Commission will not recommend to the Legislature changes in laws that have been enacted upon Commission recommendation.<sup>3.8</sup>

### CHAPTER FOUR RELATIONSHIP WITH STATE BAR

A copy of each study prepared by a research consultant is sent to each member of any special state Bar Committee appointed to consider a

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3.6. Minutes, June 1985.

3.7. Statement of existing practice. This procedure is required by the Commission's enabling statute.

3.8. Minutes, December 1971.

Commission study as soon as the research study is approved for distribution by the Commission.<sup>4.1</sup> Later, a copy of the Commission's tentative recommendation and proposed statute is sent to the State Bar.<sup>4.2</sup> When time permits, the Commission will postpone the printing of its recommendations and studies until it receives and considers the views of the State Bar.<sup>4.3</sup>

The Chairperson and members of the staff sometimes meet with representatives of State Bar committees to discuss informally Commission recommendations when requested to do so by the State Bar committee.

## CHAPTER FIVE RELATIONSHIP WITH RESEARCH CONSULTANTS

### COMPENSATION OF RESEARCH CONSULTANTS

Compensation of research consultants is on a modest scale, as paid in connection with public service rather than at regular professional rates.<sup>5.1</sup> Payment is made in a lump sum (rather than on an hourly basis) under a contract made with the consultant.<sup>5.2</sup> Partial payments may be made for portions of a research study that have been completed.

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4.1. Minutes, March 1957.

4.2. Minutes, March 1957.

4.3. Minutes, September 1956.

5.1. Minutes, June 1955.

5.2. Minutes, June 1955.

## FORM AND CONTENTS OF CONSULTANT'S STUDY<sup>5.3</sup>

Statement of scope of background study. The Commission considers it important that there be a clear understanding concerning the scope of the background study so that the background study includes an adequate discussion of those matters that the Commission believes are in need of study. For this reason, a statement of the scope of the study is prepared by the staff in cooperation with the Commission's consultant. The statement identifies those aspects of the topic to be studied that are considered by the Commission to be of particular importance. Where appropriate, the statement may indicate uniform or model acts or statutes of other jurisdictions that are to be considered in the background study. The statement is intended to assure that the background study includes an adequate discussion of the matters that are described in the statement but is not intended to restrict the consultant in any way. The consultant is completely free to include in the background study a discussion of any aspect of the topic the consultant believes should be discussed in the background study, whether or not included in the statement. The study may be written in such form and contain such discussion as the consultant believes is suitable for presentation of the subject matter of the study.

The staff prepares and presents for Commission consideration a draft of a statement of the scope of the study. If the consultant is not present at the time the draft of the statement is considered by

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5.3. Minutes, January 1982.

the Commission, the staff draft of the statement as revised by the Commission is sent to the consultant with a request that the consultant review the statement and suggest any additional aspects of the topic that the consultant believes are in need of study or other modifications of the statement that the consultant believes are desirable. The suggestions of the consultant are reviewed by the Commission and any necessary changes made in the statement.

In some cases, the Commission may invite the consultant to meet with the Commission before commencing work on the background study to discuss the scope of the study and the methodology of the study so that the Commission will gain some understanding of the subject matter to be studied and so that the background study will discuss all of the matters and include all of the information the Commission believes would be useful to the Commission in considering the particular topic.

**Form and content of study.** The consultant is completely free to determine the form and content of the background study, but the background study should include an adequate discussion of the specific matters that the statement of the scope of the study indicates should be discussed in the background study and such other matters as the consultant believes should be considered in the background study. The background study ordinarily is prepared in the form of one or more law review articles.

The Commission has found a background study most useful if it includes the following:

(1) An identification of the specific problems that may require legislative action.

(2) A discussion of existing California decisional and statutory law with respect to each such problem and, where the consultant considers it useful, a discussion of uniform or model acts or statutes of other jurisdictions and other material.

(3) The alternative methods by which each problem might be solved, the advantages and disadvantages of each alternative, and the consultant's recommendations as to which alternative is best. The consultant is completely free to make such recommendations as the consultant considers appropriate or desirable.

If views expressed in a consultant's study are not in agreement with the final recommendation of the Commission on the subject, the consultant may be asked to review pertinent parts of the study. The consultant is not required, however, to conform the study to the views of the Commission, nor are any portions of the study eliminated when the study is published merely because they are inconsistent with the final action of the Commission.<sup>5.4</sup> Whenever possible, the consultant's study is published in a California law review and may be republished in the Commission's recommendation. In some cases, a study may be published only in the Commission's recommendation. Studies are printed with a note explaining that the views expressed are not necessarily the views of the Commission.

#### **PRESENTATIONS BY CONSULTANT TO OTHER PERSONS OR GROUPS<sup>5.5</sup>**

If the consultant makes any presentation of his or her background study and recommendations to any person or group, the consultant shall make clear at the time the presentation is made that:

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5.4. Minutes, August 1960.

5.5. Minutes, January 1982.



(1) The consultant's recommendations are not recommendations of the Commission and do not represent the views or recommendations of the Commission.

(2) The Commission may or may not make recommendations on the particular matter and, if the Commission does make recommendations, those recommendations will be made in the Commission's printed report to the Legislature.

#### ADDITIONAL FUNDING OF CONSULTANT STUDIES

A consultant retained by the Commission for the preparation of a background study may seek to obtain grants or funding from foundations or other sources for the purpose of preparing the study required by the Commission, but no grant or funding shall be accepted without the prior written approval of the Commission through the Executive Secretary.

#### REPORT ON STATUS OF RESEARCH STUDIES

The Executive Secretary is to submit for Commission review approximately every six months the status of each research study being prepared by an outside research consultant.<sup>5.6</sup>

#### CERTIFICATES FOR CONSULTANTS

It is the practice of the Commission to present a certificate of distinguished service to consultants who satisfactorily complete their work for the Commission.

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5.6. Minutes, April 1971.

CHAPTER SIX  
PRINTING AND DISTRIBUTION POLICIES

DISTRIBUTION OF PRINTED RECOMMENDATIONS

The Executive Secretary determines when material should be printed.<sup>6.1</sup> However, no pamphlet containing the recommendation of the Commission is distributed unless it has first been approved for printing and distribution by the Commission.

PUBLICATION OF COMMISSION MATERIAL IN LAW REVIEWS

A letter should be obtained from a law review publishing a Commission study stating that the Commission itself may republish the article in its pamphlet containing its recommendation to the Legislature.

Studies may be published in law reviews if they are accompanied by the substance of the following note:

This article was prepared to provide the California Law Revision Commission with background information to assist the Commission in its study of this subject. The opinions, conclusions, and recommendations contained in this article are entirely those of the author do not necessarily represent or reflect the opinions, conclusions, or recommendations of the Law Revision Commission.

No tentative recommendation may be published in a law review unless Commission permission is first obtained.<sup>6.2</sup> If a tentative recommendation is published in a law review or otherwise distributed, it should be accompanied by the substance of the following note.<sup>6.3</sup>

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6.1. Minutes, March 1960, revised to reflect changes in printing procedures.

6.2. Minutes, December 1965.

6.3. Minutes, June 1966.

This tentative recommendation is published here so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation it will make to the California Legislature.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

#### NUMBER OF COPIES PRINTED

Ordinarily 1,400 copies of each Annual Report are printed. Ordinarily 1,400 copies of each recommendation and study are printed, but a lesser number may be printed if the particular recommendation is not of general interest. The State Printer holds 300 of these copies (unbound) for incorporation into the bound volume of Commission reports, recommendations, and studies. Three hundred copies of the bound volume are printed. In some cases, more copies may be printed.

#### DISTRIBUTION

**Bound volumes.** A copy of the bound volume is sent to each of the following:

- Library of Congress
- Libraries of the U.S. Supreme Court
- California State Library
- Libraries of the several district courts of appeal
- Libraries of the Judicial Council
- California county law libraries on the Commission's mailing list
- California law school libraries on the Commission's mailing list (exchange law reviews for Commission publications)
- California Continuing Education of the Bar
- Members of the Law Revision Commission (past and present)
- The Department of Justice (four offices)
- The Governor
- The Legislative Counsel
- West Publishing Company
- Bancroft-Whitney Publishing Company
- Libraries of the State Bar of California

Distribution to private law firms or to out-of-state libraries is not made.<sup>6.4</sup> Distribution is made on an exchange basis with the New York Law Revision Commission and with similar agencies in a few other states and foreign countries. Copies of the bound volume also are sent to certain other persons and agencies at the discretion of the Executive Secretary.

Distribution to the members of the Legislature is not made automatically. Members of the Legislature are sent a complementary copy upon request.

Printed recommendation and study pamphlets. Copies of all free material printed by the Commission are ordinarily sent to approximately 700 addresses, including the following:<sup>6.5</sup>

- Members of the Legislature who indicate they want a copy
- Heads of all state departments who indicate they want a copy
- California State Bar
- Special State Bar committees (if any)
- Law reviews published at California law schools
- Legal newspapers published in California
- Other persons and agencies on the Commission's mailing list not include above.

When persons who are on the Commission's mailing list leave office, their successors are given the opportunity to be placed on the list.<sup>6.6</sup>

Unpublished studies. The Executive Secretary may send a copy of an unpublished study of the Commission to a person requesting

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6.4. Minutes, May 1959.

6.5. Minutes, December 1956.

6.6. Minutes, August 1957.

it.<sup>6.7</sup> A "warning note" is included on the study indicating that the study is not a recommendation of the Commission and that no part of the study may be published without prior written consent of the Commission.<sup>6.8</sup>

#### SALE OF COMMISSION PUBLICATIONS

The Commission has a liberal policy on distribution of its free printed pamphlets and distributes them upon request. However, where it is necessary that a charge be made for the Commission's publications, arrangements for the sale are made with the Documents and Publications Section of the Department of General Services.<sup>6.9</sup>

#### COOPERATION WITH CONTINUING EDUCATION OF THE BAR

The Commission has published several publications in cooperation with the California Continuing Education of the Bar (CEB). These publications have been published primarily for CEB use in connection with programs designed to instruct lawyers concerning major legislative enactments which have resulted from Commission recommendations. The cost of the publication has been paid entirely or substantially by CEB and CEB handles the sale and distribution of the publication. The Commission receives about 400 copies (300 for the bound volume) for its own use in its continuing study of the new legislation.

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6.7. Minutes, February 1960.

6.8. Minutes, February 1960.

6.9. Minutes, August 1962.

## CHAPTER SEVEN

### DELEGATION OF AUTHORITY CONCERNING PERSONNEL AND FISCAL MATTERS

#### PERSONNEL AND FISCAL MATTERS GENERALLY<sup>7.1</sup>

Both the Chairperson and the Executive Secretary are authorized to sign on behalf of the Commission the necessary documents giving one or more Commissioners and employees authority to sign personnel and financial documents. (As of July 1979, the Chairperson, Executive Secretary, and Assistant Executive Secretary are authorized to sign all such documents; the Administrative Assistant is authorized to sign personnel documents and certain other documents.)

The Executive Secretary is authorized to determine the particular types of documents that the Assistant Executive Secretary and other Commission employees will as a matter of practice sign.

#### PERSONNEL MATTERS<sup>7.2</sup>

Appointments, promotions to higher level positions, and involuntary terminations of persons to or from positions as Executive Secretary, Assistant Executive Secretary, and other full-time attorney positions on the Commission staff shall first be approved by the Commission. In the case of an appointment of a person to a full-time attorney position (other than Executive Secretary or Assistant Executive Secretary), the approval of the Chairperson, or the Vice Chairperson in case of the unavailability of the Chairperson, shall be obtained before the appointment is made but Commission approval is not necessary.

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7.1. Minutes, October 1965.

7.2. Minutes, October 1965; Minutes, October 1971.

The Executive Secretary is authorized to take all actions, other than those specified in the first paragraph of this section, with respect to appointment, promotions, terminations, leave, merit increases, other salary increases, and the like, for Commission employees other than the Executive Secretary. Any other person authorized to sign personnel documents has similar authority but, except in emergency circumstances, this authority should be exercised only after consulting with the Executive Secretary. It is understood that no such action shall be taken over the objection of the employee involved unless the Chairperson or the Commission first indicates approval of the action proposed to be taken by the Executive Secretary.

The Chairperson, or the Vice Chairperson in case of the unavailability of the Chairperson, is authorized to take all actions, other than those specified in the first paragraph of this section, with respect to appointment, termination, leave, merit increases, and other salary increases, and similar matters for the position of Executive Secretary. The Assistant Executive Secretary, or the Administrative Assistant in case of the unavailability of the Assistant Executive Secretary is authorized to approve sick leave and vacation leave requests of the Executive Secretary.

#### **OUT-OF-STATE TRAVEL<sup>7.3</sup>**

The Chairperson, or the Vice Chairperson in case of the unavailability of the Chairperson, is authorized to approve requests for authorization by the Department of Finance and the Governor of

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7.3. Minutes, October 1965.

unbudgeted out-of-state travel by members of the Commission or its staff. (Requests for budgeted out-of-state travel are presented for approval by the Department of Finance and Governor by submission of the necessary document by the Executive Secretary.)

#### RESEARCH CONTRACTS AND LEASES

The Executive Secretary is authorized to sign on behalf of the Commission all leases and contracts previously approved by the Commission.<sup>7.4</sup>

The Executive Secretary is authorized to execute contracts covering equipment maintenance, equipment rental, subscriptions, and the like.

### CHAPTER EIGHT

#### EVALUATION OF SUGGESTED TOPICS

##### PROCEDURES FOR DETERMINATION OF NEW TOPICS<sup>8.1</sup>

The decision as to which new topics will be requested for authorization at a particular legislative session ordinarily is made at one meeting during the year. Considering the various possible new topics at one meeting each year gives the Commission an overview of all the possible new topics when a decision is made as to the new topics to be requested for authorization at a particular session.

A topic may be brought to the Commission's attention when the suggestion is received, but those topics that appear to be suitable

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7.4. Minutes, July 1964

8.1. Minutes, September 1970.



for study should be written up for possible inclusion in the Annual Report and a determination whether to request authority to study the topics is considered at the time the Annual Report is approved for printing.

## CHAPTER NINE CONFLICTS OF INTEREST

Provisions of the Political Reform Act of 1974 (Gov't Code § 81000 et seq.) and the Commission's Conflict of Interest Code pertain to disclosure of financial interests, disqualification from participating in decision-making, and dealings with lobbyists. The following discussion outlines the most important aspects of this body of law and regulation.

### SELECTED PROVISIONS OF POLITICAL REFORM ACT (as amended 1985)

#### Government Code § 87100:

87100. No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Government Code Section 87102 provides that the "requirements of Section 87100 are in addition to the requirements of . . . any Conflict of Interest Code adopted" by the agency.

#### Government Code § 87101:

87101. Section 87100 does not prevent any public official from making or participating in the making of a governmental decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.

Government Code § 87103:

87103. An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Government Code § 87300:

87300. Every agency shall adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article. A Conflict of Interest Code shall have the force of law and any violation of a Conflict of Interest Code by a designated employee shall be deemed a violation of this chapter.

**COMMISSION'S CONFLICT OF INTEREST CODE**

The following materials constitute the Commission's Conflict of Interest Code. The staff will advise designated employees under the Code when financial statements are due and will make necessary forms and other materials available. It is our understanding with the Fair Political Practices Commission that if the Law Revision Commission begins to consider a topic which could affect a type of interest not described in Disclosure Category 1 of the Appendix to the Conflict of Interest Code, the Disclosure Category must be amended within 90 days of the beginning of consideration of the topic. (Letter from Sarah T. Cameron, Deputy Chief for Conflicts of Interest, to Stan Ulrich, September 15, 1980.)

The Commission's Conflict of Interest Code, including the Appendix relating to designated employees and disclosure categories, reads as follows:

**CONFLICT OF INTEREST CODE FOR  
THE CALIFORNIA LAW REVISION COMMISSION**

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation, 2 Cal. Adm. Code Section 18730, which contains the terms of a

standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Adm. Code Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix A in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the California Law Revision Commission.

Pursuant to Section 4(A) of the standard Code, designated employees shall file statements of economic interests with their agencies. Upon receipt of the statements of Commissioners and the Executive Secretary, the agency shall make and retain a copy and forward the original of these statements to the Fair Political Practices Commission.

A P P E N D I X    A

DESIGNATED EMPLOYEES

<u>Designated Employees</u>	<u>Disclosure Categories</u>
Commission Member (appointed by Governor)	1, 2
Legislative Counsel	1, 2
Executive Secretary	1, 2, 3
Assistant Executive Secretary	1, 2, 3
Staff attorneys	1
Administrative Assistant	2, 3

DISCLOSURE CATEGORIES

Category 1

A designated employee in this category must disclose the following:

1. Interests in real property.
2. Investments in business entities listed below.
3. Personal income from entities or persons listed below.

4. Business entity income from entities or persons listed below.

5. Business positions in entities listed below.

The following entities, in the jurisdiction of California, constitute the financial interests which foreseeably may be materially affected by a Law Revision Commission decision:

1. Banks, savings and loan institutions, credit unions, and other financial institutions.

2. Mortgage brokers.

3. Collection agencies.

4. Any entities or persons whose primary activity in California is the making of secured or unsecured loans.

5. Any entities or persons whose primary activity in California is the leasing or development of real estate.

6. Any entities or persons whose primary activity in California is the leasing of personal property.

7. Insurance companies.

8. Public entities, so long as the income is not excluded by Government Code Section 82030(b)(2).

9. Title insurance companies.

10. Newspaper companies.

11. Corporate sureties.

12. Adoption agencies.

13. Persons engaging in private placing for adoption of more than one child per year.

14. Privately owned public utilities.

15. Law firms.

#### Category 2

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of

income are of the type which within the previous two years contracted with the Law Revision Commission to provide leased space or consulting services to or on behalf of the Law Revision Commission.

Category 3

A designated employee in this category must disclose business entities in which he or she has an investment and sources of income if the business entities or sources of income are of the type which within the previous two years contracted with the Law Revision Commission to provide equipment, materials, supplies, or services (other than consulting services) to or on behalf of the Law Revision Commission.

**PROVISIONS RELATING TO LOBBYISTS**

Government Code Section 86203, in the chapter of the Political Reform Act dealing with lobbyists, makes it unlawful for a lobbyist to make a gift of more than \$10 in a calendar month to "one person." Government Code Section 86204 makes it unlawful for "any person knowingly to receive" an unlawful gift. For these purposes, "gift" is defined in Government Code Section 82028. Subdivision (b)(2) of this section excludes from the definition any gift that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

APPENDIX II

BIOGRAPHIES OF COMMISSION MEMBERS  
AND STAFF

APPENDIX IV

BREAKDOWN OF AUTHORIZED STUDIES

A - ARBITRATION

B - BUSINESS LAW

- 100 - Modification of Contracts
- 200 - Liquidated Damages (former Study 72)
- 300 - Parol Evidence Rule (former Study 79)

D - DEBTOR-CREDITOR RELATIONS

- 100 - Repossession of Property (includes Claim and Delivery)
- 200 - Attachment (former Study 39.160)
- 300 - Enforcement of Judgments (former Study 39.120; 39.200-39.260)
- 301 - Creditors' Remedies (Follow Up Legislation)
- 302 - Creditors' Remedies (Follow Up Legislation 1984)
- 303 - Creditors' Remedies (Follow Up Legislation 1985)
- 310 - Homesteads
- 312 - Liability of Marital Property For Debts
- 313 - Married Women as Sole Traders
- 315 - Enforcement of Obligations After Death
- 316 - Effect of Death of Joint Tenant
- 320 - Enforcement of Claims and Judgments Against Public Entities
- 325 - Bonds and Undertakings
- 326 - Bond and Undertakings (Follow Up Legislation 1984)
- 330 - Revision of Attachment Law
- 400 - Assignment for Benefit of Creditors (former Study 39.270)

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Subheadings are as follows:

- X-xxx-10 - General
- X-xxx-20 - Commission Action
- X-xxx-30 - Research



- 500 - Confession of Judgment Procedures
- 501 - Confession of Judgment in Support and Paternity Cases
- 550 - Tax Liens
- 600 - Default Judgment Procedures
- 700 - Procedures Under Private Power of Sale
- 800 - Possessory and Nonpossessory Liens
- 801 - Interfamily Transfers as Fraudulent Conveyances
- 802 - Uniform Fraudulent Transfers Act
- 900 - Wage Garnishment Procedure

E - EMINENT DOMAIN

- 100 - Ad Valorem Taxes (former Study 36.56)
- 200 - Assessment Liens
- 300 - Wisconsin Eminent Domain Revision
- 400 - Eminent Domain Law

F - FAMILY AND JUVENILE LAW

- 101 - Uniform Veterans' Guardianship Act
- 200 - Appeal of Custody Order
- 300 - Custody of Children (former Study 30.100)
- 400 - Adoption (former Study 30.200)
- 401 - Emancipated Minors
- 500 - Freedom From Parental Custody and Control (former Study 30.400)
- 521 - Community Property in Joint Tenancy Form
- 600 - Community Property
- 601 - Division of Joint Tenancy and Tenancy in Common Property at  
Dissolution of Marriage
- 602 - Division Upon Dissolution of Marriage of Property Held in Joint  
Tenancy Form (Retroactive Application of Statute)
- 610 - Increased Earning Capacity

- 611 - Goodwill
- 620 - Federal Military and Other Federal Pensions
- 630 - Prenuptial Agreements
- 631 - Marital Agreements
- 632 - Reimbursement for Educational Expenses
- 633 - Division of Pensions
- 634 - Support
- 640 - Title and Gift Presumptions and Transmutations
- 641 - Limitations on Disposition of Community Property
- 642 - Combined Separate and Community Property
- 650 - Liability of Step Parent for Child Support
- 660 - Awarding Family Home to Spouse Having Custody of Minor Children
- 661 - Continuation of Support Obligation After Death of Support Obligor
- 662 - Special Appearance in Family Law Proceedings
- 670 - Attorney's Fees in Family Law Proceedings
- 671 - Quasi-Community Property (Tax Implications)

G - GOVERNMENTAL LIABILITY

- 100 - Notice of Rejection of Late Claims

H - REAL ESTATE AND LAND USE

- 100 - Lease Law
- 110 - Landlord-Tenant
- 200 - Partition Procedure
- 250 - Revision of Real Property Law
- 300 - Possibilities of Reverter and Powers of Termination (former Study 85)
- 400 - Marketable Title Act (former Study 86)
- 401 - Ancient Mortgages and Deeds of Trust
- 402 - Dormant Mineral Rights

- 403 - Unexercised Options
- 404 - Land Sale Contracts/Rights of Entry
- 405 - Possibilities of Reverter
- 406 - Abandoned Easements
- 407 - Obsolete Restrictions
- 500 - Quiet Title Actions
- 510 - Joint Tenancy; Rights Among Cotenants; Joint Tenancy & Community Property
- 600 - Civil Code Section 1464
- 601 - Recording Severance of Joint Tenancy
- 700 - Abandonment and Vacation of Public Streets and Highways
- 800 - Improvement Acts
- 900 - Lis Pendens

I - INVERSE CONDEMNATION

J - CIVIL PROCEDURE

- 101 - Security for Costs
- 200 - Prejudgment Interest (former Study 80)
- 300 - Class Actions (former Study 82)
- 400 - Offers of Compromise (former Study 83)
- 500 - Discovery (former Study 84)
- 600 - Dismissal for Lack of Prosecution
- 650 - Court Congestion
- 700 - Mediation

K - EVIDENCE

- 100 - Evidence of Market Value (former Study 63.70)
- 200 - Comparison With Federal Rules (former Study 63.100)
- 300 - Psychotherapist-Patient Privilege
- 400 - Mediation Privilege

L - ESTATE PLANNING, PROBATE, AND TRUSTS

- 100 - Escheat; Unclaimed Property (former Study 26)
- 200 - Powers of Appointment
- 300 - Probate Homesteads
- 400 - Rights and Disabilities of Minors/Incompetent Persons
- 500 - Durable Powers of Attorney
- 502 - Dying and Termination of Life Sustaining Procedures
- 600 - Probate Code (Generally)
- 600 - Estates and Trusts Code (Form of Comments)
- 601 - Nonprobate Transfers/Multiple-Party Accounts
- 602 - Intestate Succession
- 603 - Wills
- 604 - Family Protection (includes Pretermission)
- 605 - Rules of Construction
- 605 - Distribution Under a Will or Trust
- 606 - Contracts Concerning Succession and Provisions Relating to Effect  
of Death
- 607 - General Provisions
- 608 - Custody and Deposit of Wills
- 609 - International Wills
- 610 - Absentees
- 611 - Missing Persons
- 612 - Simultaneous Death
- 613 - Testamentary Additions to Trust; Life Insurance and Other Trusts
- 614 - Bequests to Minors
- 615 - Escheat

- 616 - Definitions
- 617 - Quasi-Community Property
- 618 - Uniform Transfers to Minors Act
- 619 - Statutory Will
- 620 - Uniform Statutory Will Act
- 625 - Wills and Intestate Succession
- 626 - Wills and Intestate Succession (Follow Up Legislation 1984)
- 627 - Notice in Limited Conservatorship Proceeding
- 628 - Order Dispensing with Accounts of Guardian or Conservator
- 629 - Item v. Aggregate Theory of Community Property
- 630 - Wills and Intestate Succession (Follow Up Legislation 1985)
- 640 - Trusts
- 641 - Creditor's Right to Reach Payments From Trust
- 642 - Claims Procedure for Trusts
- 650 - Simplifying Requirements for Execution of Will
- 651 - Recording Affidavit of Death
- 652 - Nonprobate Transfers
- 653 - Notice of Will
- 654 - Ancestral Property Doctrine
- 655 - Probate Referees
- 656 - Bond for Special Administrator
- 657 - Procedure for Objecting to Appraisement of Estate Property
- 658 - Transfer of Real Property of Small Value
- 659 - Parent-Child Relationship
- 660 - Representation (Probate Code § 240)
- 700 - Guardianship-Conservatorship
- 701 - Support to Conservatee From Community Property

- 702 - Procedure for Appointment of Successor Conservator
- 703 - Consent to Health Care
- 704 - Statutory Forms for Durable Power of Attorney
- 800 - Probate Administration/Probate Code (Abatement; Distribution of Interest and Income)
- 810 - Administration Without Court Supervision
- 811 - Form for Advice of Proposed Action
- 825 - Succession Without Administration
- 826 - Distribution of Decedent's Estate Without Administration
- 827 - Waiver of Probate Accounting
- 828 - Transfer Without Probate of Certain Property Registered by State
- 829 - Deposition of Retirement Plan Benefits Without Administration
- 830 - Probate Code (Proration of Estate Taxes)
- 900 - Notary Publics
- 1000 - Probate Code (Jurisdiction; Probate of Wills; Contest of Wills)
- 1010 - Probate Code (Executors and Administrators; Appointment; Letters; Termination of Authority; Oath and Bonds)
- 1020 - Estates and Trusts Code (Powers and Duties of Executors and Administrators) (Standard of Care of Personal Representative) (Probate Code Section 854)
- 1025 - Probate Code (Presentation of Claims)
- 1026 - Probate Code (Payment of Claims and Demands)
- 1027 - Probate Code (Accountings)
- 1028 - Probate Code (Independent Administration)
- 1029 - Probate Code (Distribution and Discharge)
- 1030 - Estates and Trusts Code (Collection or Transfer of Small Estate Without Administration) (Distribution Without Administration)
- 1031 - Probate Code (Passage of Property to Surviving Spouse Without Administration)

1032 - Probate Code (Small Estate Set-Aside)

1033 - Probate Code (Establishing Identity of Heirs)

1034 - Probate Code (Public Administrators)

1035 - Probate Code (Administration of Estates of Missing Persons Presumed  
Dead)

1050 - Probate Code (Guardianship-Conservatorship)

1100 - New Probate Code Suggestions

M - CRIMINAL LAW

100 - Statutes of Limitation on Felonies